

Benjamin Harrison Day
Indiana Supreme Court courtroom



Ex Parte Milligan Comes to Life

(a scripted trial based on the Indiana Civil War case of *Ex Parte Milligan*)

(Have large cue cards set up on the easel with pictures/words of where each scene is taking place or have an audience member hold up cards)

Part One: Military Tribunal

Student holds up APPLAUSE signs

Scene card person holds up card: “1864” and “Indianapolis, Indiana”

Narrator: As we join our story already in progress, note that it is the Fall of 1864. The Civil War has been raging for 4 long years. While thousands of Americans have lost their lives, both Northerners and Southerners, the only real military action seen in Indiana is way down south on the Indiana/Kentucky border. There are lots of people living in both northern and southern Indiana who are not happy with President Lincoln’s war policies or with the help he’s getting from Indiana’s Governor Morton. Lambdin P. Milligan is one of those people who disagree with President Lincoln and Governor Morton about the War. Soldiers arrived at Milligan’s house around midnight on October 6, 1864 and arrested him. Milligan was sick in bed and his wife said he couldn’t travel. Not wanting to leave without Milligan and not wanting to get in trouble if they returned without him, the soldiers sent for a doctor. The doctor said Milligan was well enough to travel. Milligan was immediately taken to a special train that was waiting for him on the track and sent to Indianapolis for trial.

(Enter Milligan and four of the other defendants. Milligan turns to the audience and starts talking, the other four defendants take a seat in the front row behind the counsel table on Milligan’s side.)

Narrator: Oh look, here comes Milligan. Let’s see what he has to say.

Milligan gives brief background about his case—very conversational

- I’m a lawyer and a farmer and I live in Huntington near Ft. Wayne, Indiana.
- I thought the Civil War was outrageous, so while it was going on, I joined some protest groups to convince people that the war was unfair.
- I even went to Fort Wayne to join in a protest against the draft ordered by President Lincoln. *Do you know what a **DRAFT** is?*

Audience person: (reads definition of **DRAFT** from card) Draft—To make or force someone to go into the military.

Milligan:

- I told a crowd that we should be able to refuse to enter the army because we live in a free country. I told them to resist if they wanted to. A few days later a group of soldiers showed up at my house in the middle of the night. Do you know what they did to me?

- They dragged me from my sickbed and put me on a train to Indianapolis to be put on trial in front of a military tribunal. *Do you know what a **MILITARY TRIBUNAL** is?*

Audience person: (reads definition of **MILITARY TRIBUNAL** from card) Military Tribunal—a court where military officers serve as judge and jury. Sometimes they are held in secret.

Narrator: Mr. Milligan and other members of a group he belonged to, the “Sons of Liberty,” are on trial not only for Milligan’s speech about the draft and opposing the war, but also because they were accused of plotting to set free southern soldiers being held prisoners just north of Indianapolis and because they were planning to assassinate Indiana’s Governor, Oliver Morton.

Milligan: I’m not the only one on trial here. (Point to the four co-defendants who are seated in the front row.) Several of my colleagues are also on trial. The government is saying that we were stockpiling weapons, planning on assassinating Governor Morton, and setting free some confederate prisoners of war. But why am I on trial before the military? I’m not in the Army!

Enactment of the Military Tribunal

(6 audience members—the military tribunal—stand behind the lower bench. Props: soldier style hats. Place cards with lines from the script on the lower bench. Select one juror to portray Major-General Alvin P. Hovey.)

Narrator: (talk while the soldiers are coming up to the bench—look at the soldiers as they are coming up) It looks like it’s time to begin.

***Hovey:** I am Alvin P. Hovey. Do you know who I am? (wear General hat)

Audience person: (stands up and reads **HOVEY’S** bio card) Alvin Hovey - During his long career serving both Indiana and the United States, Alvin Peterson Hovey held many different offices. At one time or another he was a judge on the Indiana Supreme Court, he was one of Indiana’s representatives to the U.S. Congress in Washington, D.C. and Governor of Indiana. At the time of Milligan’s trial, he was the military commander of the District of Indiana.

* = there are three different student parts associated with Alvin P. Hovey

Hovey: I am a Major-General in the Union Army, and I will act as the foreman of this jury. Do you know who **UNION SOLDIERS** are?

Audience person: (reads definition of **UNION SOLDIER** from card) Union Soldiers—Soldiers who fought for the Northern States (President Lincoln) during the Civil War.

Hovey: These other soldiers and I will hear the charges against Mr. Milligan and the other defendants. We will listen to their defense and decide what should happen to them if we find them guilty.

(Long pause, look down at all of the soldiers.)

Hovey: Gentleman, are we ready to begin?

Soldiers: (all nod)

Scene card person places sign on the lower bench: "Military Tribunal Week 1"
(Each of the other 5 soldiers/jurors takes a turn asking Milligan a question.)

Soldier 1: You are charged with treason.

Milligan: (loud, shocked voice) * **TREASON! TREASON?***

Audience person: (reads definition of **TREASON** from card) Treason—Betraying or trying to cause harm to the government of the United States. This crime is punishable by death.

Narrator: Remember, the country is at war and Milligan is accused of plotting to assassinate Governor Morton and to arm Southern prisoners of war.

Soldier 2: How do you plead Mr. Milligan, guilty or not guilty?

Milligan: NOT guilty! I live in a free country!

Soldier 3: Your country is free because the Union Army fights for it!

Milligan: The Union Army fights for me so I can be free to speak my mind in public. This war is wrong.

Scene card person removes sign on the lower bench: "Military Tribunal Week 1"
Scene card person places sign on the lower bench: "Military Tribunal Week 2"

Soldier 4: So you are against your President and against your Government? You planned to free Southern prisoners being held in Indianapolis...

Milligan: No, I'm not opposed to my government. But I am opposed to this "unnecessary, unjust, and infamous" war and think I should be allowed to say so in as many speeches as I want and anywhere I want!

Soldier 5: What did you tell people to do at that Fort Wayne meeting?

Milligan: I told them that I thought they shouldn't have to join the army if they didn't want to! I can't help it if other people were violent and defiant in their protesting against the war.

Scene card person removes sign on the lower bench: "Military Tribunal Week 2"
Scene card person places sign on the lower bench: "Military Tribunal Week 3"

Hovey: (turns to fellow soldiers/jurors) Well, we've been here a long time now. This trial has been going on for three long weeks. Do any of you have any more questions for Mr. Milligan or the other defendants?

All Soldiers: No

Hovey: Will the defendants please rise? (Milligan and other 4 defendants stand) Gentleman, how do you find them?

Soldier 1: Guilty.

Soldier 2: Guilty.

Soldier 3: Guilty.

Soldier 4: Guilty.

Soldier 5: Guilty.

Hovey: Mr. Milligan, we find you and your associates guilty. You and the other 4 leaders of this organization are sentenced to death by hanging.

(students playing soldiers return to their seats from front of courtroom.)

Other 4 defendants: (stand up from front row seats and go up to Milligan and look worried) What are we going to do? What are we going to do?

Milligan: This is ridiculous. I'm going to appeal to the U.S. Supreme Court. (all walk off stage and four other defendants head back to their seats)

Scene card person removes sign on the lower bench: "Military Tribunal Week 3"

Student holds up APPLAUSE sign.

Remove scene cards for "1864" and "Indianapolis, Indiana"

Narrator: It is now late in 1864. President Lincoln was re-elected in November, and everyone is optimistic that the war will soon be ending.

(Abraham Lincoln stands up, walks around the corner or stands up in place with student assigned to Lincoln biography card beside him, etc. Props: two Abraham Lincoln hats.)

Audience person: (reads biography of **PRESIDENT LINCOLN** from card) President Lincoln—Abraham Lincoln was elected the 16th President of the United States in 1860, and re-elected in 1864. He was the Commander-In-Chief of Union during the Civil War. He signed the Emancipation Proclamation—changing the war from one about Union to one about ending slavery, and he wrote the Gettysburg Address. Lincoln was assassinated by John Wilkes Booth 5 days after the Civil War ended.

President Lincoln: I think I'm going to put Mr. Milligan's execution on hold until after we see what the U.S. Supreme Court has to say about this.

Milligan: That President Lincoln seems like a good man. He said he might even throw out my death sentence.

Student holds up APPLAUSE sign.

Narrator: While Milligan gathers his defense team and heads off from Indianapolis to Washington, D.C. to appeal his case, we will have a short discussion with a special guest.

(Abraham Lincoln and biography card for Lincoln students return to their seats.)

Part Two: Question and Answer Session

Moderator engages audience in a question and answer session

Suggested topics:

1. When was the Civil War?
2. Who were the 2 sides in the War?
3. Do you think Milligan should have been tried for opposing the war? What about if he planned to use violent resistance?
4. Do you think it is okay for the military to try someone who isn't in the army?
5. Do you think this could happen today?
6. Is the US currently at war?
7. What happens to people who protest against the war in Iraq and Afghanistan?
8. What happens to Americans who fight for the other side?

When questions seem to be fading, or when Moderator thinks enough time has been spent on this section, Milligan re-enters the room.

Student holds up APPLAUSE sign as guest speaker leaves

Narrator: While we were away, I have the unfortunate duty of telling you that President Lincoln was assassinated by that villain John Wilkes Booth. Vice-President Andrew Johnson has already been sworn in as the new President.

(President Johnson stands up in front to say the line and then sits back down.)

President Johnson: Abe Lincoln was getting too soft. No way am I going to put off this sentence. Milligan was sentenced to death, and it's time for him to die.

Part Three: U.S. Supreme Court Case

Scene card person holds up card: "1866," US Supreme Court picture, "Washington DC"

Narrator: It's been almost 2 years since Mr. Milligan was found guilty of treason by the military tribunal in Indianapolis. He has made his way to Washington D.C., and has finally won a hearing before the Supreme Court of the United States. Oh look, there's Milligan now.

Milligan: Well, I thought the treatment I received from the military court was completely unfair, so I appealed to the U.S. Supreme Court.

Narrator: *Do you know what an **APPEAL** is?*

Audience person: (reads definition of **APPEAL** from card) Appeal—To have a higher court review the ruling of a lower court. You only do this if you are not happy with the ruling of the lower court.

(The 4 students portraying the US Supreme Court Justices emerge on to the upper bench in robes. Bailiff is standing at lower bench with gavel. Props: 4 Justice robes, Justice faceplates with names on bench, blazer, and gavel.)

Black goes and stands next to Milligan at Attorney table on right. Speed goes to Attorney table on left.

Audience person: (reads definition of **US SUPREME COURT** from Card) The U.S. Supreme Court is the highest court in the United States. Of the 9 justices who were serving on the Court at the time of Milligan's hearing, 5 of them had been appointed by President Lincoln, including Chief Justice Salmon Chase.

Bailiff: (*pound the gavel*) All rise. (everyone in the room stands up) The Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States. Oyez! Oyez! Oyez! All persons having business before the Supreme Court of the United States are admonished to draw near and give their attention, for the Court is now sitting. God save the United States and this Honorable Court! (*judges sit down*). You may be seated.

Chief Justice Salmon Chase: We have before us the case of *Ex Parte Milligan*. Mr. Milligan has been convicted of treason and sentenced to death. Today, he appeals his conviction. Mr. Milligan you may begin.

Milligan: Thank you, Mr. Chief Justice. Your Honors, 2 years ago I was dragged from my sick bed in the middle of the night, put on a train to Indianapolis, and tried before a military tribunal. **EVEN THOUGH I WASN'T IN THE ARMY!** It all seems so unfair, and I have been worrying myself sick. I am completely weakened from all the time I've been unlawfully forced to spend in a jail cell. I was sentenced to death, and President Lincoln delayed my sentence, but now President Johnson has ordered my execution.

Chief Justice Salmon Chase: Mr. Milligan, did you bring a lawyer with you today?

Jeremiah Black: (standing up) Mr. Chief Justice, my name is Jeremiah Black and Milligan has hired me to represent him in this case.

Chief Justice Salmon Chase: Thank you Mr. Black, but for the moment, I think we have some questions to ask your client.

Justice Samuel Miller: Mr. Milligan, let's just get to the point. When all this started, where were you giving your anti-war speeches?

Milligan: In and around Fort Wayne, Indiana, your honor.

Justice David Davis: Was there fighting going on in this area?

Milligan: No sir, this was not a war zone, but a civilian area. It is about 100 miles north of Indianapolis. The only military activity in Indiana during the war was about 200 miles south, around the border of Indiana and Kentucky.

Justice James Wayne: Who exactly made up the members of this tribunal, Mr. Milligan?

Jeremiah Black: If it pleases the Court, I'd like to answer this question. Officers in the U.S. Army made up the tribunal. They acted as judge and jury. Where in the Constitution does it say Army officials can hold a trial and sentence someone to death? Do they have special qualifications that other citizens such as butchers or millers do not?

Justice James Wayne: Were the regular courts open and conducting business during this time?

Jeremiah Black: Yes they were, your Honor.

Chief Justice Salmon Chase: Attorney General Speed, you are representing the U.S. government in this matter. Do you have anything to add?

Attorney General Speed: Yes, Mr. Justice. It is the government's position that the Constitution applies only in peacetime not in wartime. We argue, therefore, that the Constitutional requirements regarding trials do not apply to Mr. Milligan's case.

Justice David Davis: (looking shocked and surprised) Is that the best argument you have to offer?

Attorney General Speed: Your honor, it is the opinion of the Attorney General that the military tribunal was a legal process.

Justice Samuel Miller: Mr. Speed, this is one of the weakest arguments the Court has heard this term!

Chief Justice Salmon Chase: Thank you, Mr. Milligan. We will let you know our decision shortly.

(Justices pretend to confer—huddle and whisper)

Narrator: It is now December 1866. The Civil War has been over for almost a year and a half. Will the court uphold the military tribunals' sentence of death or impose a new sentence? Perhaps even set Mr. Milligan free? I think the justices are ready to announce their decision.

Justice David Davis: Mr. Milligan, the court has voted 9-0 to overturn the ruling of the military court, and here are our reasons why: This was not a war zone, and the civilian courts were working. Therefore, a military court should have no jurisdiction.

Justice James Wayne: The Chief Justice, Mr. Justice Swayne, Mr. Justice Miller (nod at his colleagues) and I agree with Mr. Justice Davis and our 4 other colleagues that the military tribunal that tried Mr. Milligan was unconstitutional.

However, we believe that the Constitution gives Congress the power to authorize these sorts of military trials if they want to do so, but in this case they did not. So, these particular tribunals were unconstitutional, but tribunals in general are not unconstitutional.

Justice Samuel Miller: You are a free man, Mr. Milligan.

Bailiff: All rise. (*Bailiff pounds gavel*) This court is adjourned. You may be seated.

(Judges Rise and leave the bench.)

Black and Speed head back to seats in audience.

Student holds up APPLAUSE sign

Remove scene cards for “1866,” US Supreme Court picture, and “Washington DC”

Part IV: Civil Trial Back in Indianapolis

Scene card person holds up cards: “1871,” “Indianapolis, Indiana,” First Indianapolis State Capitol Building picture

Narrator: It’s now been 7 long years since Milligan was initially arrested and taken from his home in Huntington to Indianapolis to stand trial before a military tribunal. The Civil War has been over for 6 years, and in the most recent Presidential election President Grant replaced President Johnson. It has been 5 years since the U.S. Supreme Court overturned Mr. Milligan’s conviction. But he is still not happy. Milligan spent several years in prison and many more years fighting to clear his name. He decided that someone should pay for all of his trouble. Back in Indianapolis Milligan decides to go to a civilian court and to try to get an award of some money to compensate him for his years of pain and suffering. Let’s see what happens in this final court appearance.

Milligan: Ha! Finally someone has been reasonable, those Justices in Washington D.C. knew an innocent man when they saw one! But I’ve been angry, sad and scared for so long...My health is terrible. I am a sickly man, because of those Union soldiers! I’m going to sue everyone involved in that original trial. And I’m going to hire the best lawyer in town: *Thomas Hendricks, have you ever heard of him?*

Audience person: (describes **THOMAS HENDRICKS** career from card) Thomas Hendricks—In 1871, Thomas Hendricks was considered to be one of the best lawyers in Indianapolis. He was Milligan’s attorney in the final trial held in Indianapolis. In 1872, he became governor of Indiana and in 1884, Vice-President of the United States.

Narrator: Milligan brings charges against Alvin P. Hovey, the military commander and head of the tribunal; Oliver P. Morton, Governor of Indiana during the war; and General Ben Spooner, another high ranking Union officer.

Milligan: Governor Morton, General Hovey, and General Ben Spooner better just watch out. With a lawyer like Thomas Hendricks, who could possibly defeat me?

(Oliver Morton, Alvin Hovey and General Ben Spooner gather in the front of the room.)

Morton: This is ridiculous. (turns to audience) Do you know who I am?

Audience person: (stands up and reads **MORTON’S** bio card) Oliver Perry Morton was governor of Indiana during Milligan’s Military Trial. He was the first Indiana-born man to hold the office of governor.

Morton: I was the Governor of Indiana during the war, how can he sue me? (Turn to Hovey and Spooner)

Spooner: Well (turn and gesture to Hovey) Hovey and I were both Generals and he’s suing us, so why shouldn’t he sue you too? He has no respect. I even lost my arm in that War he protested against. I was with General Sherman, you know, on the way to Atlanta when I got hurt.

Hovey: I guess serving my country wasn’t enough. The war is over and we still have to put up with people who won’t let it go.

Morton: Who should we hire to defend us?

Hovey: We’d better get a good lawyer. I heard Milligan hired Thomas Hendricks and his law partners, Oscar Hord and Abram Hendricks!

(Audience member rings a bell to represent a phone or doorbell.)

(Audience member stands up and reads a telegram from President Grant)

Audience person: (Reads from **TELEGRAM**) Urgent telegram from President Grant to Governor Morton and Generals Spooner and Hovey. The President suggests you hire Benjamin Harrison to defend you in the Milligan case.

Morton: Well what do you think? (looking back and forth between Spooner and Hovey) Should we ask Benjamin Harrison if he’ll do it?

Narrator: Do you know who Benjamin Harrison is?

Audience person: (reads **HARRISON** career info from card) Benjamin Harrison lived in Indianapolis and was considered a brilliant lawyer. When Morton, Spooner, and Hovey were sued by Milligan, President Grant suggested they hire Benjamin Harrison to represent them. In 1888, Harrison was elected president of the United States.

Morton: Harrison is perfect and he has two partners, Albert Porter and Cyrus Hines who can help out as well.

Student holds up APPLAUSE sign

(Morton, Spooner, and Hovey head back to their seats in the front row behind their counsel table.)

(6 audience members file up to stand behind the lower bench as jurors. Props: bowler style hats, bow ties, and money for jury award.)

Hendricks, Hendricks, and Hord head to Attorney table at right with Milligan. Harrison, Porter, and Hines head to Attorney table at left.

Narrator: I think it's time for the trial to begin. Let's see what Thomas Hendricks has to say on Milligan's behalf.

Thomas Hendricks: Ladies and gentlemen of the jury, don't let yourselves be fooled. Mr. Milligan (gesture at Milligan) was denied the protection of the Constitution when he was tried in a military tribunal and sentenced to death. The men who are on trial here today put an innocent civilian in front of a military tribunal in an area outside a war zone.

Juror 4: Why is a military tribunal different from a normal court?

Thomas Hendricks: A military tribunal is different from a civilian court because military officers serve as judge and jury. The military was trying people who weren't in the military. Milligan was not a soldier.

Juror 6: So when Milligan appealed to the U.S. Supreme Court, they said it was illegal for Mr. Milligan to be tried in front of a military tribunal because

1. Indiana was not a war zone (especially north of Indianapolis), and
2. he was not in the military.

Thomas Hendricks: Yes. There can be no trials of civilians by soldiers outside of war zones. You (the jury) are here to uphold the law, and the U.S. Supreme Court says that the war-time trial of Mr. Milligan was unlawful. General Hovey and the other members of the tribunal (can turn and point to them) made a serious error in judgment. They grabbed an innocent and ill man. They threatened him, took him away from his family, and eventually sentenced him to death.

Juror 5: Mr. Milligan was sick at the time the soldier came for him? What was wrong with him?

Thomas Hendricks: Yes, he was sick in bed with some kind of skin infection. His wife felt he was too sick to travel.

Juror 1: I understand the soldiers sent for a doctor before they took him to Indianapolis. What did the doctor say?

Thomas Hendricks: The doctor did say that Mr. Milligan was well enough to travel, but still, imagine that a mob of soldiers came to your door and asked you if this man was well enough to travel. What would you say?

Juror 2: Just what did Mr. Milligan do or say about the war that got him in such big trouble?

Thomas Hendricks: He spoke to crowds criticizing President Lincoln's war policies and told people they should be able to refuse to enter the army.

Is this not a free country? What choice do you have but to award Mr. Milligan something for his pain and suffering...not only HIS pain and suffering, but his FAMILY'S suffering as well? (sits down)

(Abram Hendricks gets up.)

Abram Hendricks: If I might be permitted to provide additional information regarding Indiana and attitudes towards the Civil War following up on the points made by my partner, Mr. Hendricks.

Mr. Milligan was not alone in his anti-war feeling. He was not some outsider, but one of many who felt the war was wrong. Indiana was originally settled from south to north. So many Hoosiers had their roots in Kentucky, Maryland, Virginia, and North Carolina. These people grew up with the institution of slavery and like Mr. Milligan they were not thrilled with "President Lincoln's War."

During much of the war, the trade between Southern Indiana and Kentucky continued to thrive. Indeed Indiana Senator Jesse Bright owned slaves on a Kentucky plantation and even tried to help the Confederates make purchases during the war.

Juror 4: Excuse me Sir, is this the same Senator Bright who was expelled from the U.S. Senate for being a southern sympathizer and trying to arrange gun sales to the Confederates?

Abram Hendricks: Well... (trail off and look uncomfortable)

Juror 3: And Mr. Milligan did a lot more than talk about the war, didn't he?

Abram Hendricks: Well... (trail off and look uncomfortable)

Juror 1: He actually planned to assassinate Governor Morton and to free Southern prisoners, didn't he?

(Hord gets up and Abram Hendricks sits down.)

Oscar Hord: If I might add a few points for the jury to consider. I encourage the jurors to try and broaden their minds and think beyond the specific details of Mr. Milligan's case.

What if in the future Milligan's actions are not so unusual that this circumstance might not come up again? Imagine a military installation is bombed by a foreign power (I know you can't hardly envision this, but it could happen.) Since the U.S. is a nation made up of immigrants from foreign countries, would you put people of that ethnic background in jail or an internment center?

Narrator: Hmm, have you ever even heard of Pearl Harbor?

Oscar Hord: What if a person of foreign birth intentionally destroys a civilian target? (I know, again this is difficult for you to imagine). Would we stop anyone from that country from entering the U.S.?

Narrator: Hmm, is the World Trade Center considered a civilian target?

Juror 5: Why is this guy talking about bombing buildings?

Oscar Hord: This case has potentially long-reaching implications. It is up to this court to show the courts how to protect citizens like Mr. Milligan – a patriot who just happens to disagree with the public policy decisions of the current administrator.

(Hord sits back down.)

Student holds up APPLAUSE sign

Narrator: Mr. Milligan's lawyers sure made some good points and the jury had some great questions. Let's see how Hovey, Spooner, and Morton's lawyers do.

(Harrison stands up.)

(Milligan and Thomas Hendricks can ad lib during Harrison's argument like injecting questions or objecting.)

Harrison: My fellow patriots, what we have here is a scoundrel (point to Milligan) trying to cover himself with a shield of law. I am not standing here telling you to throw the law away. What my clients did, trying Mr. Milligan in a military court, has been determined by the U.S. Supreme Court to be unconstitutional. However, what we are missing in this story is the big picture. First, you should know that Mr. Milligan is not the innocent bystander his lawyers are trying to make you believe. He was high-up in the chain of command in the “Sons of Liberty.”

Juror 3: Who were the “Sons of Liberty”?

Harrison: The “Sons of Liberty,” or the Knights of the Golden Circle, were a secret society, which Mr. Milligan belonged to. This group was plotting to set free southern prisoners and planning to assassinate Indiana’s Governor. It is because of this group and its plans that Milligan was found guilty of treason. Not just because he spoke out against the war.

Juror 5: Could you please remind us of the definition of treason?

Harrison: Certainly. Treason is betraying or trying to cause harm to the United States Government.

So, while your brothers and fathers (point to jury and Hovey, Morton, and Spooner) were fighting for the Union, bleeding and dying for the cause, Mr. Milligan was plotting for a Southern victory. He was going to supply southern prisoners of war with guns. Right here in Indianapolis, Mr. Milligan and his friends were going to release the enemy into our city.

On the other hand, the men on trial here today, Governor Morton, General Hovey and General Spooner, were sworn protectors of our fair city. General Spooner (Spooner stands up), for example, lost his arm for his country, and almost lost his life.

Juror 4: How did he lose his arm?

Harrison: He lost his arm at the Battle of Kennesaw Mountain. Kennesaw Mountain is down in Georgia. He was with General Sherman’s army.

Once again, I agree that the accused men made a mistake when trying Milligan in front of a military tribunal. But the freedom that these men fought for is sacred. Don’t let it be ruined by protecting the interest of a traitor such as Mr. Milligan. Thank you. (sits down)

Narrator: Wow, Mr. Harrison is a powerful lawyer. And, the defense isn’t done yet. His law partners still have some things to add.

(Porter stands up.)

Albert Porter: Ladies and Gentleman as my colleague Mr. Harrison (wave towards Harrison) has pointed out, there is little doubt that Mr. Milligan opposed the late Civil War. In fact, Mr. Milligan's attorney just made a point of telling you that Milligan was not alone in holding a pro-South point of view. I'm not sure bringing up the name of Senator Bright helped his cause any. After Bright was expelled in disgrace from the U.S. Senate for trying to aid gun sales to the enemy, he was not welcomed back home in Indiana. He moved to Kentucky! But I digress, let's get back to Milligan...

While Mr. Hendricks and his partners reminded you of the Courts opinion in *Ex Parte Milligan* as delivered by Mr. Justice Davis, they failed to point out that three of the nine justices joined Chief Justice Chase in an opinion offering different reasoning than that offered by Justice Davis.

Juror 6: But didn't all nine Justices agree that it was unconstitutional to try Mr. Milligan before the military tribunal?

(Porter sits down and Hines stands up.)

Cyrus Hines: If I might be of some use explaining my colleagues point. It is true that the court voted 9-0 to overturn Mr. Milligan's conviction, but please allow me to explain the differences between the two groups within the court. Chief Justice Salmon Chase, joined by Justices Miller, Wayne and Swayne all agreed with the other five justices that Mr. Milligan's military tribunal was unconstitutional. However, their reasons were different. The other justices led by David Davis say it was unconstitutional only because Congress had not authorized the tribunals. The Chief Justice argues that Congress has the power to create military tribunals, but had not done so in Mr. Milligan's case.

Juror 2: If Milligan hadn't gotten the U.S. Supreme Court to overturn his conviction on these jurisdictional grounds, what exactly did these justices think he'd done wrong?

Cyrus Hines: Notice that none of these arguments discuss what Mr. Milligan actually did. There is little doubt that Milligan and his friends were involved in a conspiracy, if not against the whole of the United States, then certainly against our great State of Indiana. Remember, he and his colleagues were responsible for stealing muskets on their way to our state militia. They were going to give these guns to southern prisoners and maybe use them to shoot Governor Morton (point to Morton). Are we going to allow him to get away with this because of a mere jurisdictional technicality? Milligan should be thankful that he was tried by the military and not in a regular court!

(Hines sits down.)

Narrator: I think that's it for the lawyers. Let's see what the jury has to say.

(Jurors pretend to confer—huddle together)

Juror 1: We find in favor of Mr. Milligan

Juror 2: We award him \$5 in damages (Hold up a prop—oversized money—if we have it.) for all of the pain and suffering and personal loss that he claims to have suffered over the last 8 years.

Juror 3: The \$5 recognizes the U.S. Supreme Court’s ruling that the military tribunal was not the right place to bring charges against Milligan. But, at the same time, it shows our feeling that he certainly acted in a criminal way.

Student holds up APPLAUSE sign

Remove scene cards for “1871,” “Indianapolis, Indiana,” and First Indianapolis State Capitol Building picture

Jury members head back to seats in audience.

Hendricks, Hendricks, and Hord head back to seats in audience.

Harrison, Porter, and Hines head back to seats in audience.